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*City and County of Denver*



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December 16, 1994

VIA FAX

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DEC 19 1994

FCC MAIL ROOM

William F. Caton  
 Acting Secretary  
 Federal Communications Commission  
 1919 M Street, N.W.  
 Washington, D.C. 20554

Dear Mr. Caton:

The enclosed is submitted on behalf of the City and County of Denver, Colorado ("City") to be included as part of the Comments sought by the Federal Communications Commission in its Third Further Notice of Proposed Rulemaking, CC Docket No. 87-266. The City's Comments pertain to preferential access for Public, Educational and Governmental programmers to video dialtone system capacity.

The original and nine (9) copies are enclosed. Please contact me at the above address and telephone number if additional information is needed to properly evaluate the enclosed materials.

Sincerely,

Hiawatha Davis, Jr.  
 City Councilman and  
 Chair, Economic Development Committee

Enclosure

Hard Copy to Follow

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 List A B C D E

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

TELEPHONE COMPANY-  
CABLE TELEVISION  
Cross-Ownership Rules,  
Sections 63.54-63.58

and

Amendments of Parts 32, 36,  
61, 64, and 69 of the  
Commission's Rules to  
Establish and Implement  
Regulatory Procedures for  
Video Dialtone Service

CC Docket No. 87-266

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RM-8221 **FCC MAIL ROOM**

**COMMENTS OF THE CITY AND COUNTY OF DENVER, COLORADO**

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City Councilman and  
Chair, Economic Development Committee

City and County of Denver  
City and County Building  
Denver, CO 80202

December 16, 1994

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**COMMENTS OF THE CITY AND COUNTY OF DENVER, COLORADO**

**I. INTRODUCTION**

On November 7, 1994, the Federal Communications Commission ("FCC" or "Commission") released its Third Further Notice Of Proposed Rulemaking in CC Docket No. 87-266 which, among other things, requests comments on proposals to provide preferential access for certain classes of video programmers to video dialtone system capacity. The City and County of Denver, Colorado ("City") firmly believes that the FCC should establish preferential access for Public, Educational and Governmental (PEG) programmers. If such access is not established, the City believes that the Commission will fail to meet its public interest goal of providing the widest possible diversity of programming through video dialtone.

The City is an interested party in this proceeding because it acts both as a PEG programmer and as a representative of other PEG programmers through its role as the

franchising authority for Denver. Over 242,000 City and County of Denver homes are passed by the City's cable television franchisee, Mile High Cable Partners, L.P.. Over 96,000 of these homes subscribe to cable television and have access to seven (7) PEG Access channels. These seven (7) channels include three (3) public, two (2) educational, and two (2) governmental offerings. The public channels are programmed by Denver Community Television (DCTV), a non-profit organization. The educational channels are programmed by the Denver Public Schools (DPS) and several Higher Education institutions. The governmental channels are programmed by the City's Office of Television Services.

The programming provided over these channels significantly advances the public interest for the City's citizen/subscribers. A review of such programming indicates the wide diversity that it provides to the Denver community. For example, governmental programming includes live governmental proceedings, descriptions of City services, news programs, and live call-in shows on topics of critical interest that allow the active participation of Denver subscribers. Educational programming includes Higher Education telecourses that effectively extend the educational programmers' campuses into the entire community. Equally important, DPS is able to cablecast telecourses, live school board meetings, and student-produced programming to a greatly expanded audience through its PEG Access channel.

The public as a whole also benefits greatly from the channels specifically devoted to public access because they are able to both view, and participate in the production of, the programming on these channels. This includes news, education, and information programming that is community-oriented, community-based, and produced with a great amount of volunteer participation.

It is clear that such programming has had a positive and widely-felt effect on Denver citizen/subscribers. Yet the same subscribers would realize no benefits from such programming when subscribing to a video dialtone system, because the FCC has made no provision for the traditional form of PEG Access in its current video dialtone rules. In fact, the FCC's current rules prohibit preferential access for PEG programmers.

Based on its significant experience with both fostering and producing PEG programming, the City is greatly concerned about the FCC's prohibition and strongly believes that the absence of preferential PEG Access provisions in the video dialtone rules are contrary to the public interest. In order for the FCC's video dialtone rules to be made consistent with the public interest regarding PEG programming, the City believes that the Commission should modify its rules according to the principles described in the discussion below.

## **II. DISCUSSION**

The City believes that the following four considerations are essential modifications to the FCC's video dialtone regulations in order for such regulations to truly serve the public interest.

### **A. The FCC Should Establish Preferential Access To Video Dialtone Systems For Public, Educational And Governmental (PEG) Programmers**

It has long been recognized at the federal level that without preferential treatment, PEG programmers would not be able to successfully gain access to multi-channel video systems. From the initial development of the concept of PEG channels by the Commission in the early 1970s through the deregulation and reregulation of the cable television industry by the U.S. Congress in the 1984 and 1992 Cable Acts, federal public policy has continually affirmed that PEG channels further the public interest, expand program diversity, and are

entitled to preferential access. For example, even as Congress deregulated certain facets of the cable television industry in 1984, it reaffirmed the importance of preferential access requirements for PEG channels when it stated that such requirements enable "a wide diversity of information sources for the public -- the fundamental goal of the First Amendment -- without the need to regulate the content of programming provided over cable."<sup>1</sup>

Federal public policy has recognized, and local government experience has shown, that PEG channels serve the public good. As indicated in the introduction to these Comments, PEG channels in Denver provide a wide diversity of programming that touches the lives of many of Denver's citizens. For instance, a survey done by Denver Community Television (DCTV) indicates that 47% of Denver cable television subscribers have viewed public access programming.

Certain telephone industry proponents of video dialtone and current applicants to provide video dialtone systems agree that PEG is a valuable programming resource that should be given preferential treatment on the systems that they propose to provide. For example, the City's understanding is that both the Bell Atlantic Telephone Companies and the Pacific Telesis Group would provide preferential treatment for PEG Access if allowed by the FCC.

Agreement on this issue, however, is not universal. For example, the City is particularly troubled by the fact its likely first provider of video dialtone service, US West Communications, makes no provision for preferential PEG Access in its FCC 214

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<sup>1</sup> See House of Representatives Report No. 934, 98th Congress, Second Session at 30 (1984) ("H.R. Report").

Application for the Denver Metro area and has actively opposed preferential access for PEG programmers.<sup>2</sup>

This is why preferential access for PEG programmers to video dialtone systems must be mandated by the FCC. Mandatory access would insure the continuation of the sound federal policy that has, to this point, allowed millions of subscribers to benefit from public interest PEG programming.

**B. PEG Access Should Be At No Charge To The Programmer**

The City believes that the operational experience of PEG channels to-date comprises the compelling showing of need that the FCC has stipulated for no-cost or low-cost access of PEG programmers to video dialtone systems. Funding is limited for the majority of PEG programmers, and many channels have very tight operating budgets. In nearly all cases, such channels are also prohibited from carrying commercial advertising. Such non-commercial operation benefits consumers by enabling the development of programming totally focused on advancing a wide diversity of speech that inherently serves the public interest. However, such operation also significantly restricts the funding sources for PEG channels and certainly indicates that PEG programmers will not have the ability to gain access to video dialtone systems with the same ease as commercial programmers, unless preferential access requirements are established.

The cable television model, where PEG programmers are able to gain access at no charge for the capacity, and in most cases are also supported with facilities, equipment, and

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<sup>2</sup> See generally, US West Section 214 Application, File No. W-P-C 6919 (January 10, 1994, amended October 25, 1994) and Comments and Opposition of US West Communications to Petitions for Reconsideration of the Second Report and Order and Recommendation to Congress, CC Docket No. 87-266.

operational funding by the current multi-channel video provider, provides a good framework that, if applied to the video dialtone environment, would allow such channels to provide the same public benefits to video dialtone customers that they are now providing to cable subscribers. Based on all this, the City believes that PEG channels can only be viable on the video dialtone system if they are given access to system capacity at no charge.

The City does not believe, as the FCC has theorized, that such preferential access will create an economic distortion that will unreasonably drive up subscription rates for consumers or capacity access rates for other classes of programmers. This has not occurred in the cable television environment, and there is no evidence to suggest that it would occur in the video dialtone environment.

C. Specific PEG Access Capacity Should Be Negotiated At The Local Level

The City believes that, while the FCC should establish minimum set-asides of PEG Access capacity for video dialtone systems, the Commission should at the same time empower local governments to negotiate specific capacity levels for their specific situations. PEG Access requirements vary widely from jurisdiction to jurisdiction. For example, the Denver system certainly would need capacity to carry the seven current access channels plus additional capacity to meet the future community needs and interests. Other jurisdictions may need more or less capacity.

To this point, federal public policy, again, has consistently recognized the important role that local governments have in assessing and meeting local communications needs. For example, even in a deregulatory posture, the U.S. Congress continued to affirm that cities have the best understanding of local communications needs.<sup>3</sup> By establishing a requirement

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<sup>3</sup> H.R. Report at 19 and 24.



for PEG Access capacity and then empowering local governments to negotiate the specific amount and use of capacity at the local level, the Commission would continue this sound federal public policy.

The City also believes that this capacity should not be limited just to analog, but PEG programmers should have the capability to gain preferential access to the digital platform when such programmers have developed digital transmission facilities. This would ensure that PEG programmers are able to continue to evolve their services to comply with the technological requirements and opportunities of tomorrow's multi-channel video systems.

D. Preferential PEG Access To Video Dialtone System Capacity Is Sound Public Policy And Will Further The Public Interest

The City has indicated in these Comments that preferential treatment for PEG programmers would simply be a continuation of longstanding, sound federal public policy. The City has also demonstrated in these Comments how PEG channels, by their very nature, further the public interest and provide program diversity. Further, the City has indicated its belief that economic distortions would not occur that would create problems for other programmers in gaining access to the video dialtone system, or for subscribers in affording subscriptions to video dialtone services. In fact, since PEG programmers would not be billing subscribers for the reception of their public interest programming, all subscribers to the video dialtone system would inherently benefit from the PEG programming provided, regardless of their subscription level to other video dialtone services.

The City thus sees no downside to preferential treatment for PEG Access programmers. Rather, it sees a clear case for such programmers to be reasonably accommodated by the Commission. It also sees a clear and compelling need for such access to be at no charge to the programmer in order for such access to be truly viable.

The City understands that the Commission is concerned that it not violate the underlying principles of common carriage communications systems. However, for such systems to fully comply with their Title II obligations under the Communications Act of 1934, as amended, they must serve the public interest, convenience, and necessity. This obligation really must be the underlying goal as the Commission continues to construct its video dialtone framework. The City believes that preferential treatment for PEG Access programmers is an absolutely critical element in fully achieving this goal.

### **III. CONCLUSION**

In summary, the City firmly believes that the Commission's public interest and program diversity goals for video dialtone will not be met unless the FCC adheres to the following four principles and modifies its rules accordingly:

- Public, Educational and Governmental (PEG) programmers should have preferential access to video dialtone systems.
- PEG Access to the video dialtone system should be at no charge to the PEG programmer.
- PEG Access capacity should be negotiated at the local level.
- Preferential PEG Access is sound public policy and will further the public interest.

Respectfully Submitted,

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